

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Complaint of)
Rewarding Faith CDC Inc. against)
DTE Energy)

Case No. U-17005

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 20, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before July 10, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 16, 2012.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission



Richard A. Patterson
Administrative Law Judge

June 20, 2012

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Complaint of)
Rewarding Faith CDC Inc. against) Case No. U-17005
DTE Energy)

PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

Complainant Rewarding Faith CDC, Inc. (hereafter "Complainant") is a Michigan Ecclesiastical Corporation that conducts religious services and related activities at its building located at 12935 Buena Vista in Detroit. It has been a non-residential gas and electric customer of DTE since its founding 20 years ago.¹

In September of 2011, DTE Energy (hereafter "Respondent") added a balance of \$27,071.23 to the account of the Complainant. The complaint filed on March 20, 2012, characterizes the transaction as an impermissible back billing or billing error undercharge in violation of R 460.1602 and R 460.1617(3).

The Respondent filed an answer on May 11, 2012, alleging, inter alia, that the amount in question was a transfer of an existing balance of the accounts of Detroit Edison and Michigan Consolidated Gas Company to an account created by the merger into DTE. Apparently, due to the Complainant having filed two

¹ Early on it was a customer of Detroit Edison and Michigan Consolidated Gas Company previous to those entities being merged into DTE.

different taxpayer IDs, the computer system did not automatically perform that function at the time of the merger, four years ago.

An evidentiary hearing was conducted on May 24, 2012. Bethany Harris, a volunteer who is the principal office manager and daughter of the Pastor, testified in support of the complaint. Ms. Denise Diz, Supervisor of Customer Service for DTE, testified on its behalf. Staff appeared, but offered no testimony or exhibits. The Complainant sponsored 3 exhibits and the Respondent sponsored 16, which were bound into the record. A transcript was received by this ALJ on June 6, 2012, and reviewed in preparation of this Proposal for Decision.

FINDINGS OF FACT AND POSITIONS OF THE PARTIES

As stated above, the Complainant alleges the transaction is a back charge or billing error that was placed on its bill in violation of the billing practices applicable to non-residential electric and gas customers. Specifically, it contends that the addition to its account constitutes a “billing error” as defined in R460.1602(c)(vii) stating:

“Billing error” means an undercharge or overcharge caused by any of the following:

- (i) An incorrect actual meter read by a company representative
- (ii) An incorrect remote meter read.
- (iii) An incorrect meter constant or pressure factor.
- (iv) An incorrect calculation of the applicable rate.
- (v) A meter switched by a utility or utility representative.
- (vi) An incorrect application of the rate schedule.
- (vii) Other similar act or omission by the utility in determining the amount of the customers bill.

An undercharge or overcharge that is caused by a non-registering meter, a metering inaccuracy, or the use of an estimated meter read or a customer read is not a billing error.

The Complainant also contends the transaction is governed by R 460.1617(3) which provides:

In cases not involving unauthorized use of utility service, the customer may be back billed for the amount of the undercharge during the 12-month period immediately preceding discovery of the error. The utility shall offer the customer at least the same number of months for repayment equal to the time of the error. The back bill shall not include interest.

The Complainant also requests that a finding be made that it was discriminated against as prohibited under R 460.1603 and that the Respondent be sanctioned in the nature of an award of lost donations and attorney fees. Lastly, it asks that the power be immediately restored and that it be placed on a payment plan.

Ms. Bethany Harris was the sole witness called by the Complainant. She is the daughter of the church's pastor, Joseph Harris. She has volunteered at the church since its inception. She described her function as basically running the office, answering the telephone, preparing the church bulletin, receiving and paying bills, and other administrative functions. They first became aware that service had been disconnected on or about March 22, 2012, when she and some others went to the church to prepare it for Palm Sunday services. She described them as being "shocked". Having no electricity and heat prevented them from conducting Holy Week services, which typically brought in more people than normal and hence, an increase in donations.

The Complainant's Exhibit C indicates that the amount in question was added to the billing (payment coupon) as a transfer balance with a due date of October 31, 2011. Having received that, she contacted DTE and asked them why the balance had shown up on the bill. She was advised it was a transfer balance from a previous account. She indicated they had no knowledge of that and tried to obtain information as to which meters were involved and the amounts of usage. She denied that DTE representatives would tell them anything and stated that they would not work with them to resolve the problem. She was merely advised that the bill must be paid. Ms. Harris then sponsored Exhibit D which is a print out of an e-mail dated March 16, 2012, from the church's counsel to Ms. Diz of DTE, and Ms. Corbin of the MPSC, serving notice that the church had elected to file a formal complaint. Ms. Harris testified that over the ensuing three to four months, she attempted to obtain an explanation and was sent a number of documents, including Exhibit A which is a compilation of DTE billing sheets. She testified that the documents provided were incomprehensible and missing information. Regarding Exhibit A, she could find no explanation of certain things such as transfers and credits. It was hard for her to make out one thing from the next. The church made a payment of \$3,459.49 on March 20, 2012 (Exhibit 13), two days before the service was terminated. Ms. Harris called DTE and talked to Ms. Diz and another representative whose name she could not recall and testified she was advised nothing could be done unless the bill was paid in full. They then consulted counsel. In addition to not being able to conduct services, they are concerned with the fact that the alarm system is not

functional without power. That, together with the fact that the local police precinct has been closed, creates a risk in what she called a “challenged part of the City of Detroit”.

At the conclusion of the above testimony, counsel for the Respondent made a Motion for Directed Verdict based on the fact that there had been no proof of a billing error as defined in the rules. He characterized Ms. Harris’ testimony as only establishing she did not understand the materials provided and had identified no billing error. As to the count requesting a payment plan, he asserts that the Complainant had already been on one. Since there was no testimony regarding that, he considered the request abandoned. Lastly an objection was made to the discrimination claim on due process grounds in that it was not plead in the complaint. The motion was denied since, at that point, the record was incomplete without DTE putting on its case.

Ms. Denise Diz is a supervisor of Customer Service Executive Customer Assistance Center at DTE Energy and has worked in that capacity since June of 2011. In total, she has been employed by DTE for over 20 years. In her present position, she supervises the intake and investigation of complaints, and works with MPSC staff to resolve them. She first became involved in this matter some time in December of 2011. Initially, the gas and electric accounts were billed under separate accounts under Michigan Consolidated Gas Commercial and Detroit Edison Business Electric, respectively; at the time those entities were separate companies. When they merged, there were still two separate account numbers billed to 12935 West Buena Vista. On September 27, 2011, two

transfers were made. First, a balance of \$65.33 was transferred from Account No. 45642890001 to Account No. 325206800002, and second, a balance of \$27,005.90 was transferred from Account No. 45642890001 to Account No. 32520680002 for a total of \$27,071.23, and consists of the separate account balances as of September 2007. She explained the reason the transfer was made four years later is due to the fact that the company had two different Commercial Taxpayer ID numbers for the church, which prevented the computer from automatically transferring the balance. Ms. Diz disputes Ms. Harris's testimony that DTE or she were not willing to deal with them or offer any assistance. In fact, Ms. Diz testified she offered to have someone come to their location to go over the accounts with them and to do an energy audit. In addition, she offered to extend a payment plan for three and one half years.

Going through Exhibit 2, which is a running balance of the account, Ms. Diz also noted that the Complainant had previously been credited \$12,694.58 for service from September 21, 2004 through April 5, 2005; \$1,547.33 for service from April 5, 2004 to September 21, 2004; and, \$21,122.38 for service from April 2, 2000 through April 5, 2004, all in response to complaints to the Commission. Exhibit 4 also reflects bills cancelled in October of 2010 in a total amount of \$5,350.08.

Ms. Diz testified that at the time of the transfer, the church was offered a payment plan consisting of a requirement that they pay all current monthly charges to avoid cutoff.² However, the Complainant failed to comply with the plan as demonstrated in Exhibits 7 through 13. Starting with Exhibit 7 with a due

² At this point the amount in question was in collection.

date of November 29, 2011, the total due is \$3,542.56, which Ms. Diz testified was the amount of the payment agreement or plan. Also, according to her, that amount was not paid. Per Exhibit 8, the total due had increased to \$5,795.11 and again no payment was made. The payment agreement was then terminated and the amount in question placed back on the bill in December (Exhibit 9) with a total due of \$40,320.29. Two payments were received during that period of \$600.00 and \$500.00. The January bill (Exhibit 10) increased to \$41,626.02 and \$1,000.00 was paid toward that balance on February 2, 2012. The February bill (Exhibit 11) increased to \$44,585.51 due to current usage, and only \$500.00 was paid toward that balance on February 24, 2012. A payment of \$3,459.49 was made on March 20, 2012 against a balance of \$42,516.39, due on the March billing (Exhibit 12). As previously indicated, service was terminated on or about March 22, 2012.

DISCUSSION

I find that the amount of \$27,071.23 transferred to the current account was not a billing error as defined in R460.1602(c). The first 6 subsections, an incorrect actual meter read by a company representative; an incorrect remote meter read; an incorrect meter constant or pressure factor; an incorrect calculation of the applicable rate; a meter switched by a utility or utility representative or; an incorrect application of the rate schedule, clearly do not apply.

Subparagraph vi, upon which the Complainant claims a “billing error”, may also be other similar acts or omissions by the utility in determining the amount of the customer's bill. The transfer of a balance for past services that was not reflected on billings for a period of time, cannot be logically considered an error in the context of the rule. It is not an error in the amount, reading, rate application, or calculation, but a carryover of an existing balance. It should also not be considered a “back bill”, as asserted by the Complainant. The total amount of the transfer was incurred incrementally over the period of time that service was provided by Detroit Edison and Michigan Consolidated Gas Company as separate entities. Even though that amount was turned over for collection and the fact that the balance may not have been reflected in monthly billings for an extended period of time until it was transferred to the new account under DTE Energy, it was in existence. It was not an undercharge that was discovered in September of 2011, which would potentially be limited to the 12 month back billing period prescribed by R 460.1617(3).

The above findings of fact relative to the testimony of Ms. Bethany Harris may be summarized as her stating the confusion over the exact amounts due and the terms of the payment agreements. While some of this may be understandable, it is clear that although some attempts were made to make periodic payments, they came nowhere close to liquidating the balance due, or the amount of the payment plan in which the church was required to only pay the current charges.

While it is unfortunate that the amount in question did not appear on a bill for four years, it is evident it was in collection. Ms. Harris's assertions that the utility failed to cooperate or discriminated against them is belied by the testimony and exhibits sponsored by Ms. Diz. Not only were they given the benefit of at least one payment plan they were given a number of substantial credits in response of complaints filed with the Commission.

There is nothing on this record to indicate that Respondent DTE did anything out of the ordinary, take any action against, or penalize the Complainant that would potentially invoke R 460.1603 prohibiting discrimination against a customer for exercising its rights granted under the rules.

Regarding the Complainant's request for damages in the nature of lost contributions and reimbursement for attorney fees incurred in prosecuting the complaint, the finding above would also preclude that relief. More importantly, however, such claims are beyond the jurisdiction and authority of the Commission to adjudicate. This limitation of jurisdiction is specifically recognized by the Commission through its promulgation of R460.17501, which states:

A complaint shall be limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission.

R 460.17501 is consistent with the nature of the grant of statutory authority to the Commission. The Commission is a creature of statute and

possesses no common law authority. *Huron Portland Cement Co. v Michigan Public Service Commission*, 351 Mich 255; 88 NW 2d 492 (1958).

CONCLUSION

For the reasons stated above, I find that the amount in question does not constitute a billing error or back charge and recommend the Commission enter an order so finding. I further recommend that, under the circumstances, the Complainant be placed on a realistic payment schedule covering both the \$27,071.23 at issue and past due charges of \$16,186.23 which is not at issue. The total amount comes to \$43,257.42, per the last billing (Exhibit 13)³. Once that is accomplished and the initial payment is made, utility service should be immediately restored. The order should also make it clear that all current charges incurred after service is restored must be paid timely in addition to whatever amount is established in the payment plan relative to the past due amount.

Any arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the finding and conclusions are recited above.

MICHIGAN ADMINISTRATIVE HEARING
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For the Michigan Public Service Commission

A handwritten signature in black ink, appearing to read 'R. A. Patterson', is written over a faint horizontal line.

June 20, 2012

Richard A. Patterson
Administrative Law Judge

³ A four year payment plan would require a monthly payment of \$901.96.